

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

IN RE: )  
 )  
ITT EDUCATIONAL SERVICES, INC., *et al.*<sup>1</sup> ) Case No. 16-07207-JMC-7A  
 )  
Debtors. ) Jointly Administered

**TRUSTEE’S MOTION TO COMPROMISE AND SETTLE AVOIDANCE  
CLAIM AGAINST CAREERBUILDER, LLC d/b/a CAREERBUILDER.COM**

Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), by counsel, pursuant 11 U.S.C. §§ 105 and 363 and Rule 9019 of the Federal Rules of Bankruptcy Procedure, requests entry of an order authorizing the Trustee to compromise and settle all claims and causes of action related to CareerBuilder, LLC d/b/a CareerBuilder.com (“CareerBuilder”), including but not limited to, those claims and causes of action related to the Avoidance Claim (as defined below) on the following grounds:

**I. JURISDICTION**

1. The Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicate for relief are sections 105 and 363 of the United States Code (the “Bankruptcy Code”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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<sup>1</sup> The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

## **II. BACKGROUND**

4. On September 16, 2016 (the “Petition Date”), ITT Educational Services, Inc. (“ITT”), ESI Service Corp. (“ESI”) and Daniel Webster College, Inc. (“Webster College,” and together with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee under section 701 of the Bankruptcy Code in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

6. Prior to the Petition Date, CareerBuilder provided construction services to the Affiliated Debtors in connection with the Affiliated Debtors’ operation of schools.

7. On June 29, 2018, the Trustee filed a *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 547, 548 and 550 and to Disallow Claims Pursuant to 11 U.S.C. § 502* (the “Complaint”) against CareerBuilder, Adversary Proceeding No. 18-50132 (the “Adversary Proceeding”). In the Complaint, the Trustee seeks to avoid and recover, pursuant to chapter 5 of the Bankruptcy Code, transfers received by CareerBuilder from the Affiliated Debtors in the amount of \$40,320.82 (the “Avoidance Claim”).

## **III. SETTLEMENT**

8. In the interest of avoiding the uncertainties and expenses of further litigation, the Trustee and CareerBuilder have reached a settlement, subject to Court approval, resolving all

claims, including the Avoidance Claim. Attached and incorporated as Exhibit 1 is the *Settlement Agreement and Mutual Release* (the “Settlement Agreement”) reflecting the agreement reached by the Trustee and CareerBuilder.

9. The pertinent terms of the Settlement Agreement are as follows:

- (a) CareerBuilder is to pay the Trustee the sum of \$10,000.00 (the “Settlement Payment”) on or before May 17, 2019.
- (b) CareerBuilder has agreed to waive any and all claims and/or claims for administrative expenses it may have, asserted or unasserted, against the Affiliated Debtors or their bankruptcy estates, including but not limited to any right CareerBuilder may have under section 502(h) of the Bankruptcy Code to file a proof of claim (or to increase the amount set forth in an existing proof of claim) in the amount of the Settlement Payment. CareerBuilder shall not receive any distribution of any kind from the Affiliated Debtors’ bankruptcy estates in connection with this case.
- (c) The Trustee and CareerBuilder on behalf of themselves and related parties, do fully, finally and forever release, acquit and discharge each other and all of their officers, directors, employees, representatives, agents and professionals, and all of their respective successors and assigns, from any and all claims, demands, obligations, judgments, actions, causes of action and/or liability of every kind and nature whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, which it ever had or now had against the other party, including but not limited to those arising out of or related to the Complaint.
- (d) Following the Settlement Effective Date, the Trustee shall file a notice of dismissal with prejudice in the Adversary Proceeding.

10. Because the Settlement Agreement provides for a full release of CareerBuilder and is not limited to only those claims and causes of action related to the Avoidance Claim, the Trustee has elected to opt out of the settlement procedures for avoidance claims previously approved by the Court on May 30, 2018 [Doc 2556], and is seeking separate Court approval of the Settlement Agreement.

#### **IV. RELIEF REQUESTED**

11. The Trustee requests entry of an order, pursuant to sections 105 and 363 of the Bankruptcy Code and Bankruptcy Rule 9019: (a) authorizing the Trustee, pursuant to the terms of the Settlement Agreement, to compromise and settle all claims and causes of action related to CareerBuilder, including but not limited to, those claims and causes of action related to the Avoidance Claim; (b) approving the Settlement Agreement; and (c) authorizing the Trustee to retain the Settlement Payment in the amount of \$10,000.00 for the general administration by the Affiliated Debtors' bankruptcy estates.

#### **V. GROUNDS FOR GRANTING RELIEF**

12. A court may authorize a trustee to enter into a settlement so long as it is a sound exercise of the trustee's business judgment. *See* 11 U.S.C. § 363(b); *In re UAL Corp.*, 443 F.3d 565, 571 (7th Cir. 2006) (use under section 363 of the Bankruptcy Code must "[make] good business sense"); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (section 363 involves exercise of fiduciary duties and requires an "articulated business justification"); *see also In re Olde Prairie Block Owners, LLC*, 448 B.R. 482, 492 (Bankr. N.D. Ill. 2011) (same). Moreover, when applying the "business judgment" standard to a use of estate property under section 363 of the Bankruptcy Code, a trustee's judgment is "entitled to great judicial deference as long as a sound business reason is given." *See In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012).

13. Similarly, Bankruptcy Rule 9019(a) sets forth the requirements for compromises and settlements and permits a bankruptcy court to approve a trustee's "compromise or settlement" after notice and a hearing, if such settlement is "fair and equitable . . . and in the best interests of the bankruptcy estate." *Depoister v. Mary M. Holloway Found.*, 36 F.3d 582, 586

(7th Cir. 1994); *see also In re Energy Co-op., Inc.*, 886 F.2d 921, 927 (7th Cir. 1989) (“The benchmark for determining the propriety of a bankruptcy settlement is whether the settlement is in the best interests of the estate.”); *In re Smith*, No. 02-16450-JKC-7A, 2008 WL 4276171, at \*2 (Bankr. S.D. Ind. Sept. 10, 2008) (same). Settlements should be approved unless “the settlement ‘falls below the lowest point in the range of reasonableness.’” *In re Commercial Loan Corp.*, 316 B.R. 690, 698 (Bankr. N.D. Ill. 2004) (quoting *Energy Co-op.*, 886 F.2d at 929); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007); *see also In re Artra Grp., Inc.*, 300 B.R. 699, 702 (Bankr. N.D. Ill. 2003). Settlements and compromises are favored in bankruptcy because they expedite case administration and reduce unnecessary administrative costs. *Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000). In determining whether a compromise is in the best interests of the estate, the Court must compare “the settlement’s terms with the litigation’s probable costs and probable benefits.” *In re Am. Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987); *see also Doctors Hosp.*, 474 F.3d at 426 (“Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, including the possibility that disapproving the settlement will cause wasting of assets.”) (internal quotation marks and citations omitted); *Commercial Loan*, 316 B.R. at 697 (holding that relevant factors a bankruptcy court should consider in approving a settlement include “the litigation’s probability of success, its complexity, and its ‘attendant expense, inconvenience and delay’” (quoting *Am. Reserve Corp.*, 841 F.2d at 161)).

14. The Trustee has determined the settlement terms based on the merits of CareerBuilder’s defenses to the Avoidance Claim and the risk and expense to the Affiliated Debtors’ bankruptcy estates if the Avoidance Claim was litigated. After review of CareerBuilder’s defenses to the Avoidance Claim, the Trustee has determined the net transfer

liability to be less than the total gross amount of the Transfers. As such, the terms of the Settlement Agreement reflect a compromise between the parties, whereby CareerBuilder is paying \$10,000.00 towards the net transfer liability and waiving its right to receive a distribution in this case. Based upon these considerations and the Trustee's business judgment, the Trustee respectfully submits that the Settlement Agreement is fair, equitable, in the best interest of the Affiliated Debtors' bankruptcy estates and within the range of reasonableness for approval under Bankruptcy Rule 9019(a).

## **VI. NOTICE**

15. Pursuant to the *Notice, Case Management and Administrative Procedures* (the "Case Management Procedures") approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this motion on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; (c) the Appearance List; and (d) CareerBuilder.

**NOTICE IS GIVEN**, that pursuant to the Case Management Procedures, any objection to this motion must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** (prevailing Eastern Time) on **June 5, 2019**. Those not required or not permitted to file electronically must deliver any objection by U.S. mail, courier, overnight/express mail or in person at:

116 U.S. Courthouse  
46 East Ohio Street  
Indianapolis, IN 46204

The objecting party must also serve a copy of the written objection upon the Trustee's counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204. **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

**NOTICE IS FURTHER GIVEN** that in the event an objection to this motion is timely filed, a hearing on this motion and such objection will be conducted on **June 12, 2019** at **1:30 p.m.** (prevailing Eastern time), in Room 325 of the United States Courthouse, 46 East Ohio Street, Indianapolis, IN 46204.

**WHEREFORE**, the Trustee respectfully requests entry of an order: (i) authorizing the Trustee, pursuant to the terms of the Settlement Agreement, to compromise and settle all claims and causes of action related to CareerBuilder, including but not limited to, those claims and causes of action related to the Avoidance Claim; (ii) approving the Settlement Agreement; (iii) authorizing the Trustee to retain the Settlement Payment in the amount of \$10,000.00 for the general administration by the Affiliated Debtors' bankruptcy estates, and (iv) granting the Trustee all other just and proper relief.

Respectfully submitted,

RUBIN & LEVIN, P.C.

By: /s/ John C. Hoard

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2019, a copy of the foregoing *Trustee's Motion to Compromise and Settle Avoidance Claim Against CareerBuilder, LLC d/b/a CareerBuilder.com* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on April 26, 2019, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion to Compromise and Settle Avoidance Claim Against CareerBuilder, LLC d/b/a CareerBuilder.com* was emailed to the following:

Arlington ISD/Richardson ISD: Eboney Cobb at ecobb@pbfc.com  
CEC Red Run, LLC: Alan M. Grochal at agrochal@tydingslaw.com  
SWRE Deal V Building, LLC: Paul Weiser at pweiser@buchalter.com  
Tarrant County/Dallas County: Elizabeth Weller at dallas.bankruptcy@publicans.com  
Northwest Natural Gas Company: Ashlee Minty at Ashlee.Minty@nwnatural.com  
Solar Drive Business, LLC: Chris W. Halling at challing@hallingmeza.com  
Market-Turk Company: Jordan A. Lavinsky at jlavinsky@hansonbridgett.com  
Taxing Authority for Harris County, Texas: John P. Dillman at houston\_bankruptcy@lgbs.com  
Texas Comptroller of Public Accounts: Rachel Obaldo at rachel.obaldo@oag.texas.gov  
Clear Creek Independent School District: Carl O. Sandin at csandin@pbfc.com  
Synchrony Bank: Recovery Management Systems Corporation at claims@recoverycorp.com  
Bexar County: Don Stecker at sanantonio.bankruptcy@publicans.com  
SWRE Deal V Building, LLC: Nancy K. Swift at nswift@buchalter.com  
TN Dept. of Revenue: Michael Willey at michael.willey@ag.tn.gov  
Florida Department of Education: Benman D. Szeto at benman.szeto@fldoe.org  
Last Second Media, Inc.: T. Todd Eglund at tegland@beldenblaine.com  
Hung Duong: Kevin Schwin at kevin@schwinlaw.com  
Travis County: Kay D. Brock at kay.brock@traviscountytexas.gov  
Able Building Maintenance: Scott D. Fink at bronationalecf@weltman.com  
Marathon Ventures, LLC: Daniel M. Karger at kargerlaw@gmail.com  
Oklahoma County Treasurer: Tammy Jones at tammy.jones@oklahomacounty.org  
JM Partners LLC: John Marshall at jmarshall@jmpartnersllc.com

I further certify that on April 26, 2019, pursuant to Section IV.C.3(b)(ii) of the Case Management Procedures, a copy of the foregoing *Trustee's Motion to Compromise and Settle Avoidance Claim Against CareerBuilder, LLC d/b/a CareerBuilder.com* was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following:

CareerBuilder, LLC d/b/a CareerBuilder.com  
200 N. LaSalle Street, Suite 1100  
Chicago, IL 60601

/s/ John C. Hoard

John C. Hoard